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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Jerrold Booth,

Plaintiff,

v.

Terry Stewart, et. al.,

Defendants.

CV 02-2213-PHX-MHM (DKD)

ORDER

Pending before the Court is Plaintiff's Motion For Case Status, filed with the Court on September 1, 2006 (Doc. #107).

In his motion, Plaintiff "pleads with the Court for a case information sheet." Plaintiff requests to know what he is required to do to re-file this action, which was dismissed without prejudice. Plaintiff also requests that the Court send him information "on each and every case he's filed."

Plaintiff is correct that this action was dismissed without prejudice (Doc. #98). To re-assert his claims, Plaintiff must file a new action. To do so, Plaintiff must either pay the \$350.00 filing fee in a lump sum or, if granted the privilege of proceeding *in forma pauperis*, pay the fee incrementally as set forth in 28 U.S.C. § 1915(b)(1). An application to proceed *in forma pauperis* requires an affidavit of indigence and a *certified* copy of the inmate's trust account statement for the six months preceding the filing of the Complaint. 28 U.S.C. § 1915(a)(2). An inmate must submit statements from each institution where he was confined during the six-month period. *Id.* To assist

1 prisoners in meeting these requirements, the Court requires use of a form application. LRCiv 3.4(a).

2 If a prisoner is granted leave to proceed *in forma pauperis*, the Court will assess an initial
3 partial filing fee of 20% of either the average monthly deposits or the average monthly balance in
4 Plaintiff's account, whichever is greater. 28 U.S.C. § 1915(b)(1). An initial partial filing fee will
5 only be collected when funds exist. 28 U.S.C. § 1915(b)(4). The balance of the fee will be collected
6 in monthly payments of 20% of the preceding month's income credited to an inmate's account, each
7 time the amount in the account exceeds \$10.00. 28 U.S.C. § 1915(b)(2).

8 If Plaintiff decides to file a new action, he must do so on the court-approved form. The
9 instructions provided with the form will instruct Plaintiff what he must do to file an action. The
10 Clerk of the Court will be directed to provide to Plaintiff a court-approved form for filing an civil
11 rights action pursuant to 42 U.S.C. §1983.

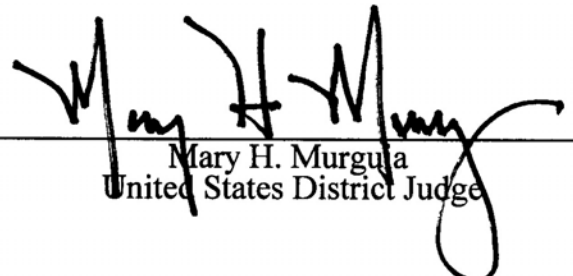
12 Plaintiff should note that in § 1983 actions, the applicable statute of limitations is the forum
13 state's statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266, 274-
14 76 (1985); Vaughan v. Grijalva, 927 F.2d 476, 478 (9th Cir. 1991). The Arizona statute of
15 limitations for personal injury actions is two years. See A.R.S. § 12-542(1); Madden-Tyler v.
16 Maricopa County, 943 P.2d 822, 824 (Ariz. Ct. App. 1997); Vaughan, 927 F.2d at 478. The Court
17 must also apply any state rule for tolling to actions brought under § 1983. Hardin v. Straub, 490
18 U.S. 536, 544 (1989); TwoRivers v. Lewis, 174 F.3d 987, 992 (9th Cir. 1999).

19 Finally, to the extent that Plaintiff seeks information in each of his cases, he must file a
20 separate motion for each case in which he seeks information.

21 **IT IS ORDERED:**

22 (1) That Plaintiff's Motion For Case Status (Doc. #107) is **granted only to the extent** that
23 Plaintiff has been advised by the Court as to what he is required to do to re-file an action. The
24 motion is denied in all other respects.

25 DATED this 24th day of January, 2007.

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Mary H. Murgula
United States District Judge

**INFORMATION AND INSTRUCTIONS FOR A
PRISONER FILING CIVIL RIGHTS COMPLAINT
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

I. General Information About the Civil Rights Complaint Form:

A. The Form. The civil rights complaint form is designed to help prisoners prepare a complaint seeking relief for a violation of their federal civil rights. Local Rule of Civil Procedure 3.4(a) requires that prisoner civil rights complaints be filed on the court-approved form. Your complaint must be typewritten or legibly handwritten. All information must be clearly and concisely written, **only in the space provided on the form**. If needed, you may attach no more than fifteen additional pages of standard letter size paper to continue any part of the complaint. You must identify which part of the complaint is being continued and number all pages.

B. Your Signature. You must sign the complaint. Your signature constitutes a certificate that: 1) you have read the complaint; 2) to the best of your knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and law; and 3) it is not being filed for any improper purpose. Please review Rule 11 of the Federal Rules of Civil Procedure. Rule 11 provides for the imposition of sanctions if the complaint is signed in violation of the Rule.

C. The Filing Fee. You must pay the \$350.00 filing fee. If you are unable to pay the filing fee when the complaint is filed, you may request leave to proceed *in forma pauperis*. Please review the "Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court *In Forma Pauperis* Pursuant to 28 U.S.C. § 1915" for more information.

D. Court Divisions. If you resided in Maricopa, Pinal, Yuma, La Paz, or Gila county when your rights were allegedly violated, you should file your complaint in the Phoenix Division of the court. If you resided in Apache, Navajo, Coconino, Mohave, or Yavapai county when your rights were allegedly violated, you should file your complaint in the Prescott Division of the court. If you resided in Pima, Cochise, Santa Cruz, Graham, or Greenlee county when your rights were allegedly violated, you should file your complaint in the Tucson Division of the court. See LRCiv 5.1(a) and 77.1(a).

You should mail THE ORIGINAL AND ONE COPY of your complaint with the \$350.00 filing fee or the application to proceed *in forma pauperis* to:

Phoenix & Prescott Divisions:

OR

Tucson Division:

U.S. District Court Clerk
U.S. Courthouse, Suite 321
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

E. Certificate of Service on Defendants. You must furnish the opposing party or their attorney with a copy of any document you submit to the court (except the initial complaint and application to proceed *in forma pauperis*). Pursuant to Rules 5(a) and (d) of the Federal Rules of Civil Procedure, each original document (except the initial complaint and application for leave to proceed *in forma pauperis*) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the opposing party or their attorney and the address to which it was mailed. Any document received by the court which does not include a certificate of service may be stricken. A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this ___ day of ___ (month) ___, (year) ___, to:
Name: _____
Address: _____
Attorney for Defendant(s)/Respondent(s)

(Signature)

F. Original and Judge's Copy. You must furnish an original and one copy of any document submitted to the court. You must furnish one additional copy to the clerk if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original.

G. Exhibits. You should not submit exhibits with the complaint. Instead, the relevant information should be paraphrased in the complaint. You should keep the exhibits to use to support or oppose a motion for summary judgment or at trial.

H. Change of Address. You must immediately notify the clerk and the opposing party or their attorney in writing of any change in your mailing address. Failure to notify the court of any change in your mailing address may result in the dismissal of your case.

I. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. Rule 15(a) of the Federal Rules of Civil Procedure allows you to file one amended complaint prior to any defendant filing an answer. After any defendant has filed an answer, you must file a motion for leave to amend and lodge a proposed amended complaint. Local Rule of Civil Procedure 15.1(a)(2) prohibits any amended pleading from referencing any prior pleading. Further, any allegations or defendants not included in the amended complaint are considered dismissed.

J. Letters and Motions. It is generally inappropriate to write a letter to any of the District Judges, Magistrates Judges, or the staff of any of the judicial officers. The appropriate way to communicate with these persons is by filing a written pleading or motion.

II. Completing the Civil Rights Complaint Form:

HEADING:

1. Your Name. Print your name, prison or jail inmate number, and mailing address on the lines provided.
2. Defendants. Print the names of each of your defendants. If you name more than **four** defendants, you should print the name of one defendant and "see additional page for defendants" in the space provided. On the additional page you must list the names of **all** of the defendants. This additional page should be inserted after page 1 and numbered as page "1-A" at the bottom of the page. The initial complaint must contain the names of **all** of the parties (plaintiffs as well as defendants) in the heading (or on the additional page if more than four defendants). See Rule 10(a) of the Federal Rules of Civil Procedure.
3. Jury Demand. If you want a jury trial, you must write "JURY TRIAL DEMANDED" on the line below "CIVIL RIGHTS COMPLAINT BY A PRISONER." Failure to do so will result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; "Bivens v. Six Unknown Federal Narcotics Agents" for federal defendants; or "other." If you mark "other," identify the source of that authority.
2. Plaintiff. Print all of the requested information on the spaces provided. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as "2-A," "2-B," etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights the defendant(s) violated. The form provides space to allege three separate counts (one violation per count). If you are alleging more than three

counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages "5-A", "5-B", etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. YOU MAY ALLEGE THE VIOLATION OF ONLY ONE CIVIL RIGHTS CLAIM PER COUNT.

2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. YOU MAY CHECK ONLY ONE BOX PER COUNT. If you check the box marked "Other," you must identify the specific issue involved in the space provided.

3. Supporting Facts. After you have identified which civil right was violated, you need to state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you need to identify which defendant did what act. You also need to state the date(s) on which the act(s) occurred if possible.

4. Injury. State precisely how you were injured by the alleged violation of your rights.

5. Administrative Remedies. Exhaustion of administrative remedies is a prerequisite to filing a civil rights complaint. 42 U.S.C. § 1997e requires prisoners to exhaust the available administrative remedies before being allowed to file a civil rights action. Consequently, you must disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If one of your counts is exempt from the grievance procedures or administrative appeals, fully explain the exemption on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Your signature must be an original signature, not a photocopy.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed by the court. All questions must be answered concisely in the proper space on the form. If needed, you may attach no more than fifteen additional pages. The form, however, must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____ (Full Name of Plaintiff))	
)	
Plaintiff,)	
)	
vs.)	CASE NO. _____
)	(To be supplied by the Clerk)
_____)	
)	
_____)	
)	
_____)	CIVIL RIGHTS COMPLAINT BY A PRISONER
)	
_____)	<input type="checkbox"/> Original Complaint
(Full Name of Each Defendant))	<input type="checkbox"/> First Amended Complaint
Defendant(s).)	<input type="checkbox"/> Second Amended Complaint
_____)	

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:
 - a. ☐ 28 U.S.C. § 1343(a)(3); 42 U.S.C. § 1983
 - b. ☐ 28 U.S.C. § 1331; Bivens v. Six Unknown Federal Narcotics Agents, 403 U.S. 388 (1971).
 - c. ☐ Other: (Please specify.) _____

2. Name of Plaintiff: _____
 Present mailing address: _____
 (Failure to notify the Court of your change of address may result in dismissal of this action.)

 Institution/city where violation occurred: _____

3. Name of first Defendant: _____. The first Defendant is employed as: _____
 _____ at _____
 (Position and Title) (Institution)

The first Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).

Explain how the first Defendant was acting under color of law: _____

4. Name of second Defendant: _____. The second Defendant is employed as: _____
 _____ at _____
 (Position and Title) (Institution)

The second Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).

Explain how the second Defendant was acting under color of law: _____

5. Name of third Defendant: _____. The third Defendant is employed as: _____
 _____ at _____
 (Position and Title) (Institution)

The third Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).

Explain how the third Defendant was acting under color of law: _____

6. Name of fourth Defendant: _____. The fourth Defendant is employed as: _____
 _____ at _____
 (Position and Title) (Institution)

The fourth Defendant is sued in his/her: ☐ individual capacity ☐ official capacity (check one or both).

Explain how the fourth Defendant was acting under color of law: _____

(If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.)

B. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If your answer is "yes," how many lawsuits have you filed? _____. Describe the previous lawsuits in the spaces provided below.
3. First prior lawsuit:
 - a. Parties to previous lawsuit:

Plaintiff: _____

Defendants: _____

- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
4. Second prior lawsuit:
- a. Parties to previous lawsuit:
Plaintiff: _____.
Defendants: _____
_____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.
5. Third prior lawsuit:
- a. Parties to previous lawsuit:
Plaintiff: _____.
Defendants: _____
_____.
- b. Court: (If federal court, identify the district; if state court, identify the county.) _____
_____.
- c. Case or docket number: _____.
- d. Claims raised: _____

_____.
- e. Disposition: (For example: Was the case dismissed? Was it appealed? Is it still pending?) _____
_____.
- f. Approximate date lawsuit was filed: _____.
- g. Approximate date of disposition: _____.

(If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.)

COUNT II

1. The following constitutional or other federal civil right has been violated by the Defendant(s): _____

 _____.

2. Count II involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)
- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count II. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

- ## 5. Administrative Remedies:

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. _____

COUNT III

1. The following constitutional or other federal civil right has been violated by the Defendant(s): _____

 _____.

2. Count III involves: (Check **only one**; if your claim involves more than one issue, each issue should be stated in a different count)
- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts:** (State as briefly as possible the FACTS supporting Count III. Describe exactly what each Defendant did or did not do to violate your rights. State the facts clearly in your own words without citing legal authority or arguments).

4. **Injury:** (State how you have been injured by the actions or inactions of the Defendant(s)).

- ## 5. Administrative Remedies:

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief to the highest level, briefly explain why you did not. _____

(If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.)

